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Supreme Court of the United States

ROCIO SANCHEZ, OLGA CASTRO, MYRNA MARTINEZ, KAREN BJORLAND, CHERYL MACLYMAN, AND RHONDA KERN,
Petitioners,

v.

COUNTY OF SAN DIEGO, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR THE PETITIONERS

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REPLY BRIEF FOR THE PETITIONERS

As petitioners demonstrated in their opening brief, the uncertain status of this Court's decision in *Wyman v. James*, 400 U.S. 309 (1971), has created a deep and longstanding circuit-court conflict over the Fourth Amendment standard governing home entries by social-services officials. That split has been expressly recognized by at least one court of appeals. *See Roe v. Tex. Dep't of Protective & Regulatory Servs.*, 299 F.3d 395, 401 & n.4 (5th Cir. 2002) ("Selecting the applicable test for a social worker's investigative home visit would be a question of first impression in this circuit—an issue over which other courts of appeals have divided."). Respondents do not—and cannot plausibly—deny the existence of this conflict, and they offer no persuasive reason why it does not merit the Court's review.

1. Petitioners have shown already that *Wyman*'s first and principal holding—that a governmental entry into the private home of a welfare recipient does not constitute a "search" under the Fourth Amendment because it occurs outside "the traditional criminal law context"—has been undermined badly, if not outright superseded, by more recent decisions of this Court. Pet. 10-17. Respondents do not even attempt to argue otherwise, tacitly conceding that *Wyman* cannot be reconciled with more contemporary Fourth Amendment precedent. Instead, respondents argue that there is no need for this Court to resolve definitively the question of *Wyman*'s status and the conflict it has generated. That argument is wholly without merit.

a. Respondents argue that there is no "pressing" need to clarify the status of *Wyman* because that decision has been implicated directly in only two court of appeals' cases. (Opp. 23.) That is simply not so.

As respondents acknowledge, two courts of appeals—the court below and the Seventh Circuit, *see S.L. v. Whitburn*, 67

F.3d 1299, 1306-07 (1995)—have relied expressly on *Wyman* in evaluating the constitutionality of welfare-verification home entries. But as is discussed at length in petitioners' opening brief, many other courts of appeals have cited and relied on *Wyman*, as well, in cases involving social-services home entries outside the welfare context. *See, e.g., Roe*, 299 F.3d at 405 (Fifth Circuit); *Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir. 1993); *Calabretta v. Floyd*, 189 F.3d 808, 816 (9th Cir. 1999).

It is true, as respondents note, Opp. 21, that not all courts of appeals apply *Wyman* in similar circumstances. But that only underscores the uncertain status of *Wyman*. It is precisely because some courts appear to have concluded that *Wyman* is no longer good law while others continue to treat *Wyman* as governing precedent that this Court's intervention is necessary.

That *Wyman* is the source of substantial lower court confusion is undeniable. That confusion should be resolved. The Court could hardly find a better vehicle for reexamining *Wyman* than a case in which the court of appeals held it to be controlling on similar facts.

b. Respondents also argue that *Wyman* is properly understood to apply only in the welfare context. It follows, they suggest, that cases cited by petitioners that fall outside that context—categorized by respondents as "child abuse" cases (Opp. 20-23)—cannot be the basis of a meaningful circuit split. That, too, is incorrect.

First of all, respondents may well believe that *Wyman* has no application outside the welfare context. But the critical point here, which respondents cannot escape and do not even purport to address, is that the *courts of appeals* do not all agree that the matter is so clear-cut. As noted above, several courts of appeals have cited *Wyman* outside of the welfare context. *See, e.g., Wildauer*, 993 F.2d at 372. And those that do not cite it, perhaps because they agree with

respondents or because they believe it to be clear that *Wyman* is no longer valid, find themselves out of synch with other courts. *See, e.g.*, *Good v. Dauphin County Soc. Servs. for Children & Youth*, 891 F.2d 1087, 1090 (3d Cir. 1989) (holding warrant requirement applicable to a social worker's investigative home visit). It is that confusion among the courts themselves—which persists despite respondents' certainty—that necessitates this Court's intervention.

In any event, respondents' confidence that *Wyman* could have no bearing on non-welfare cases is badly misplaced. The principal holding of *Wyman* is that the home entry in that case was not a search for Fourth Amendment purposes because it did not arise in "the traditional criminal law context." That holding is plainly implicated by *any* official home entry made in connection with a social-services program and outside the "criminal law context." Respondents' views notwithstanding, it is hardly surprising that so many lower courts have taken *Wyman* at its word and analyzed that case in connection with home entries undertaken in a variety of social-services contexts.

Nor is it true, as respondents suggest, that the factual circumstances presented by non-welfare cases are so different from those in welfare cases that the cases cannot be considered together for these purposes. First, though respondents label all of the non-welfare cases cited by petitioners as "child abuse" cases, those cases in fact involve many different factual predicates for home entries. *See, e.g.*, *Lenz v. Winburn*, 51 F.3d 1540, 1543-44 (11th Cir. 1995) (home entry by social worker to retrieve child's belongings from home of former custodial parent); *Roska v. Peterson*, 328 F.3d 1230, 1238-39 (10th Cir. 2003) (home entry by social worker to remove child from home). And some of those cases raise issues very similar to those presented in the welfare context. In *Wildauer*, 993 F.2d at 370-71, for instance, the Fourth Circuit considered an investigative home

visit designed to confirm the fitness of foster parents—persons who voluntarily agree to become foster parents and could avoid a home entry by forgoing that agreement.

In any event, whatever the precise scenario prompting a home entry, the *relevant* facts—a government official entering a private home for a purpose other than criminal law enforcement—are the same in all of these cases. It is that basic fact pattern, common to *all* of the cases cited by petitioners, that squarely raises the question dividing the lower courts: what threshold Fourth Amendment standard applies to a home entry by an official with a social-services rather than law-enforcement agenda, and is *Wyman* still controlling on that point?

c. Finally, respondents argue that there is no need to clarify the status of *Wyman*'s principal holding that a social-services home entry does not constitute a Fourth Amendment "search" because the lower courts can and do rely alternatively on *Wyman*'s secondary rationale: that even if such an entry is a "search," it is "reasonable" under the Fourth Amendment. Opp. 13-25. But the availability of an alternative ground for upholding suspicionless searches in the social-services context is no answer to the problems created by *Wyman*'s outdated holding.

First, there is no reason why a court should be required first to invoke a questionable precedent that, if valid, would decide the case before it, and then go on to justify that result by way of an entirely different and arguably superfluous rationale. Indeed, one of the functions of this Court's certiorari review is to resolve the doctrinal confusion that leads to just that kind of judicial inefficiency. That even respondents believe such a cumbersome and opaque method of adjudication is made necessary by *Wyman*'s uncertain status is itself a reason for this Court to grant review.

Second, the circuitous route prescribed by respondents works only in one direction: it allows a court to *uphold* a

home search undertaken in the social-services context. *Wyman*'s first holding—that a social-services home entry does not constitute a "search" at all—simply does not permit the opposite conclusion: that a social-services home entry *violates* the Fourth Amendment because it is "unreasonable" under *Wyman*'s alternative rationale. Put differently, a court cannot remain faithful to *Wyman*'s first holding and also invalidate a suspicionless social-services home entry. There is thus no way to avoid the necessity for a definitive ruling on whether *Wyman* remains good law.

2. Respondents devote a substantial portion of their brief to arguing that the decision below is consistent with *Wyman*'s alternative "reasonableness" rationale. Opp. 25-37. Petitioners already have catalogued the reasons why, even assuming that *Wyman*'s "reasonableness" analysis controls, the suspicionless home searches authorized by Project 100% could not survive review. Pet. 18-21. In particular, that the searches at issue here are conducted by agents of the District Attorney's office, rather than social workers, and specifically contemplate referrals for criminal prosecution—facts that respondents seek to minimize, Opp. 27, 29, but cannot deny—brings this case outside *Wyman*'s secondary "reasonableness" rationale. *See* Pet. 18.

Notably, respondents limit their merits argument to *Wyman*, and do not even attempt to justify the outcome below under any more contemporary Fourth Amendment standard, such as the "special needs" exception to the warrant requirement. Nor could they. We do not agree with respondents, for instance, that under *Wyman*, a home-entry welfare-verification program need not be justified by an actual welfare fraud problem. *See* Opp. 34. But whatever the correct answer under *Wyman*, it is abundantly clear that under the modern special needs exception, a regime of suspicionless searches must indeed be designed to address an actual and serious problem. *See, e.g., Chandler v. Miller*,

520 U.S. 305, 318-19 (1997) (invalidating random drug-testing of political candidates under "special needs" standard for lack of a "demonstrated problem of drug abuse"). And respondents are unable to point to any substantial welfare-fraud problem to which Project 100% responds. Similarly, respondents argue that under *Wyman*, whether a home search is conducted by a social worker or a law-enforcement agent is not "germane." Opp. 29. That is not a fair reading of *Wyman*. But more important here, whatever the weight to be assigned that factor under *Wyman*'s amorphous "reasonableness" calculus, it is plain beyond dispute that application of the special needs standard turns critically on the degree of law-enforcement involvement in a general search program. *See, e.g., Ferguson v. City of Charleston*, 532 U.S. 67, 79 (2001) (refusing to apply "special needs" exception to warrant requirement to program with significant law-enforcement involvement and purpose).

Elsewhere in their brief, respondents suggest that *Wyman*'s continued application by some (though not all) of the lower courts presents no urgent problem because the secondary, "reasonableness" rationale of that case is not meaningfully different from the "special needs" standard since established by this Court. Opp. 24. But respondents' own defense of Project 100% shows that this is not true. In many respects, including those identified above, the special needs standard is substantially more demanding than *Wyman*'s multi-factored "reasonableness" analysis—certainly as that analysis is understood by respondents. By defending Project 100% only under *Wyman*, respondents tacitly concede that *Wyman*'s continued validity is crucial to their case. And to the precise extent that they are right, their argument demonstrates the compelling need for this Court to clarify whether *Wyman* does in fact remain governing law.

3. In their opening brief, petitioners demonstrated that the reasoning of the opinion below is broad enough to allow

for a wide range of highly intrusive, suspicionless home searches. Read most broadly, the Ninth Circuit's reliance on *Wyman*'s first holding would bring an entire category of non-law-enforcement home entries outside the purview of the Fourth Amendment altogether. And even read more narrowly, the decision below seems clearly to approve as "reasonable" any suspicionless home search that is conducted in order to verify eligibility for a governmental benefit. Pet. 20-21.

Respondents do not attempt to argue otherwise, and they identify no limiting principle in the opinion below that would preclude additional eligibility-verification home searches. Instead, they reassure the Court that such searches will not occur because there is "no need" for home "visits" to determine eligibility for other government programs. Opp. 36-37. But that is entirely beside the point. The issue here is whether, assuming the government—unlike respondents—believes that searches *would* be useful in confirming eligibility for a program or benefit,[1] there is anything in the Fourth Amendment that would impose external limits on its ability to engage in a general program of suspicionless home searches. The decision below, and now respondents, provide no such constitutional stopping point. This Court should grant review to clarify that the government does not have unlimited authority to conduct suspicionless home searches in order to verify eligibility for governmental benefits.

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[1] Respondents' views about the need for such searches, though doubtlessly sincere, may not reflect the views of the government administrators who actually would make such decisions. For instance, it is true, as respondents note, that it is not necessary for a dependent to reside in the home of a person claiming that dependent as a tax deduction. Opp. 37. But that does not mean that the IRS could not plausibly decide that it would be useful to use a home visit to confirm that, say, an eight-year-old claimed as a "qualifying child" dependent—who is required by the IRS to have, *inter alia*, "the same principal place of abode as the taxpayer for more than one-half of [the] taxable year," 26 U.S.C. § 152(c)(1)(B)—actually meets the statutory definition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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